No. 89-515.

In the

Supreme Court of the United States.

OCTOBER TERM, 1989.

ROCHESTER, NEW HAMPSHIRE, SCHOOL DISTRICT,
PETITIONER,

v.

TIMOTHY W., BY AND THROUGH HIS
MOTHER AND NEXT FRIEND, CYNTHIA W.,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

OBJECTION TO THE MOTION FOR LEAVE TO FILE AN AMICI CURIAE BRIEF OF THE NATIONAL SCHOOL BOARDS ASSOCIATION AND THE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, OR IN THE ALTERNATIVE, MOTION TO STRIKE PORTIONS OF AMICI'S BRIEF.

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1. On September 30, 1989, a Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit was

filed in this case. The Petition sets out the following two questions for review:

> a. Whether the Education for All Handicapped Children Act, 20 U.S.C. §§ 1400 *et seq.*, requires participating States and local school districts to provide educational services to children whose mental incapacity renders them unable to benefit from such services.
>
> b. Whether a State's obligations under the Education for All Handicapped Children Act may be significantly expanded by transforming "related services" — such as physical and occupational therapy — into educational services, which are entitled to far broader statutory coverage.

2. On or about October 30, 1989, the National School Boards Association and the American Association of School Administrators filed a motion for leave to file a brief as *Amici Curiae*, and a brief in support the Petition for Writ of Certiorari in this case.

3. In their brief, *Amici* argue that the Petition should be granted because the court of appeals erred in adopting its own factual findings without ruling that the district court's findings were clearly erroneous. Brief of Amici, National School Boards Association *et al.* at 17. Contrary to the rules of this Court (Rules 21.1 (a) and 15.1 (a)), however, this issue is not fairly included in the Questions Presented by the Petitioner.

4. In addition, in an effort to buttress their argument that the court of appeals erred in its factual conclusions, *Amici* also reproduce, in total, in the body of their brief a copy of a letter dated August 6, 1989 sent by Lynn Miller to *The New York Times*. Lynn Miller testified at the preliminary injunction hearing in 1984 in this case. Her testimony and reports are, therefore, part of the record in this case. App. I, 45-53.

5. This letter was not published by *The New York Times*. This letter is not part of the record in this case.

6. It was improper for the National School Boards Association and the American Association of School Administrators to attach to their brief and cite evidence that is not part of the record in this case. *Adickes* v. *Kress & Co.*, 393 U.S. 144, 157-58 n.16 (1970); *Johnson* v. *United States*, 426 F.2d 651, 656 n.8 (D.C. Cir. 1970).

WHEREFORE, Respondent respectfully requests that this Court:

A. Deny the National School Boards Association and the American Association of School Administrators motion for leave to file a brief as *Amici Curiae* in this case.

B. In the alternative, strike *Amici's* argument, beginning on page 17 and ending on page 19 of their brief, that the court of appeals erred by adopting its own factual findings without ruling that the district court's findings were clearly erroneous in this case.

C. Grant such other and further relief as may be deemed just and appropriate.

Respectfully submitted,

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